

IN SENATE OF THE UNITED STATES.

JANUARY 20, 1848.

Submitted, and ordered to be printed.

Mr. WESTCOTT made the following

REPORT :

*The Committee of Claims, to whom was referred the petition of David Whelply, report :*

That it appears by the papers before the committee, that this petition was presented to the Senate July 25, 1846, and referred to the Committee of Claims of the 1st session, 29th Congress. On the 16th December, 1846, (2d session of same Congress,) it was again referred to the same committee, which (January 17, 1847,) was discharged from its further consideration.

The petition is signed by Amos Holton, attorney for Mr. Whelply, and recites his faithful services while a soldier in the regular army of the United States from 1798 to 1815, and particularly in the first exploring party under General Pike, while that officer was a lieutenant in the United States army in 1805 and 1806; and, subsequently, also as a soldier in the regular army till the war with Great Britain closed; and it asks that he may be granted an allowance similar to those made to Lewis and Clarke's and Lieutenant Wilkes's exploring parties.

The principal facts stated in the petition are verified by the affidavit of the petitioner, and by copies of letters and by statements of Mrs. Pike, the widow of General Pike, in a pamphlet printed by Mr. Holton, in relation to her application to Congress for allowances for the services of her husband in those expeditions. It is not pretended that Mr. Whelply ever received any wound, or injury, or loss, whilst a regular soldier in the service of the United States, or that he incurred any extraordinary expenses; nor is it shown that his services on the expedition referred to were in any respect greater, or of a peculiar character, different from those of the other soldiers who accompanied Lieutenant Pike; *but his claim is based merely upon the fact of long and faithful service as a regular soldier, his advanced age, being (it is so stated) the only survivor of Pike's first party, and his extreme indigence, and his inability to support himself.*

The committee have examined this case with a disposition to render the relief prayed for, if they could sustain such decision upon

well-established and sound principles on which Congress has heretofore made allowances. They cannot, however, find it embraced by any such settled principles.

Congress, in 1807, (see stat. at large, vol. 6, chap. 32, page 65,) gave to Lewis and Clarke 1,600 acres of public land, each, and to 31 of the persons who accompanied them 320 acres of land, each, to be located west of the Mississippi, and also double pay. Those persons were *volunteers* for that particular expedition. They were mostly citizens who enlisted only for *that special service*. (See Lewis and Clarke's Travels, vol. 1, p. 2.) They did not stand on the same footing as *soldiers of the regular army*. If they had been wounded or otherwise injured in the perilous service they performed, they would not have been entitled, under any of the general pension laws, to any pension on account of such injury. The petitioner in this case was an *enlisted soldier of the regular army of the United States*, and went with his superior officer, Lieutenant Pike, in obedience to his military orders, and in the performance of military duty. (See Pike's Expedition, appendix, p. 68.) Without reference to such circumstances, however, and looking to the perils encountered, the hardships undergone, and the extent and character of the undertaking, and of the services rendered, the claims of the soldiers with Lieutenant Pike are not deemed to be of as high character as those of the volunteers who went across the Rocky mountains to the Pacific with Lewis and Clarke. It was the *very extraordinary character* of their service that induced the allowance to them. (See American State Papers, vol. 1, tit. military affairs, p. 207, &c.) This petitioner must have received his military bounty lands at the expiration of the term of some of his enlistments from 1798, when he first entered the service, till after the termination of the war with Great Britain in 1815, when he was last discharged.

By act of March 3, 1843, (stat. at large, vol. 5, p. 636, ch. 100,) Congress allowed the "*officers*" in the surveying and exploring expedition to the Pacific ocean, &c., under Lieutenant Wilkes, "*who were employed in the scientific duties,*" extra pay equal to that allowed to the "*officers engaged in the coast survey.*" It will hardly be alleged that this case is within the principle of that allowance.

Congress, by act of July 29, 1846, (pamphlet laws, 1846, chap. 71, p. 67,) gave Mrs. Pike \$3,000 for the extraordinary services of General Pike in his two expeditions; and the propriety of such allowance to that officer, "*who performed the extra duties of astronomer, surveyor, clerk, spy, guide, and hunter, topographer and histriographer of the expedition, and, besides, had all the responsibilities of commanding officer,*" may be conceded, and yet the exclusion of this case, in which no such extraordinary duties were imposed upon, or services rendered, or responsibilities encountered by the petitioner, reconciled to it. (See report of Senate Committee on Military Affairs in Mrs. Pike's case, January 15, 1846.)

These three cases are all to which the committee have been referred in the papers filed, or bearing any analogy to this, and as affording precedents for the allowance prayed. There are numerous decisions of both Houses of Congress adverse to such allow-

ances. To yield it, therefore, it is conceived by the committee, would be to establish a new precedent. It would open wide the door to innumerable applications for relief in cases of equal merit, but as in this case entirely depending, not upon any settled rule or principle of wise legislation, but *only upon the discreet exercise of the power of making benevolent gratuities*. Congress has heretofore, again and again, avoided this with wise and scrupulous caution.

The Commissioner of Pensions, to whom this case was referred when it was before the Committee on Pensions at the last session, addressed a letter to the chairman, of which the following is a copy:

PENSION OFFICE, *February 17, 1847.*

SIR: David Whelply's petition and papers are herewith returned. Of the truth of his statement relative to his service there can be no doubt. The records, so far as they go, confirm his statement. The appendix to the third part of General Pike's narrative of his expedition, to the Pacific, shows that the petitioner was in that expedition. He asks for extra compensation for such service. Congress alone, by a special act, can grant relief. All that the government promised him when he entered the service has been paid.

I have the honor to be, very respectfully, your obedient servant,  
J. L. EDWARDS.

Hon. H. JOHNSON,  
*Chairman of the Committee on Pensions,  
Senate United States.*

It appears thereby, that the petitioner is not within any of the principles upon which *pensions* have been heretofore granted. The committee therefore recommend the adoption of the following resolution:

*Resolved*, That the application of David Whelply for relief should not be granted by act of Congress.

